

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.229 OF 2006

Vasudeo Mahadeo Vatore .. Appellant.
Vs.
Manjula Narayan Bhaud & Anr. .. Respondents.

Ms.Sharvari Shailendra for the appellant.
Mr.R.M.Pethe for respondent no.1.

CORAM : D.B.BHOSALE, J.
DATED : 13TH SEPTEMBER, 2007.

P.C.:

. Heard learned counsel for the parties.

2. This second appeal is directed against the judgments of the courts below by which a suit filed by the respondent-plaintiff for partition and separate possession of her share in her father's property and for declaration that the alleged adoption of appellant/defendant no.1 is illegal. Ms.Shailendra, learned counsel for the appellant assailed the judgments on two grounds. Firstly, she submitted that the plaintiff being a daughter of Mahadeo had no right to seek partition of the joint family properties, and secondly, the adoption deed has been proved by defendant no.1 by examining the attesting witnesses and by producing other supporting evidence. The findings of the courts below in respect thereof are perverse and deserve to be set aside.

3. The first submission is devoid of any merit since it is clear and which has not been disputed that the plaintiff sought share in the property of her father and not in the joint family property, as tried to contended by the learned counsel for the appellant. Insofar as the second submission is concerned she vehemently submitted that in view of specific admission given by the plaintiff in Exhibit-43-notice and in view of the fact that the plaintiff did not examine her mother - defendant no.2 and that he did not challenge the adoption till 1996 clearly shows that adoption was genuine and legal. This submission also deserves to be rejected outright. Both the courts below after having considered and assessed the entire evidence on record have held that defendant no.1 is not an adopted son of Mahadeo, the father of the plaintiff, and that the adoption is void. The burden was on defendant no.1 to prove the case set up by him and it appears that he did not discharged the burden and proved the adoption. Both the courts below have considered the entire evidence on record in proper prespective and the findings of facts cannot be termed as perverse. No substantial question of law is raised in this appeal. In the circumstances this second appeal deserves to be dismissed and is dismissed as such.

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(D.B.BHOSALE, J.)